



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

September 7, 2018

Susie Cagle  
MuckRock News  
411A Highland Ave.  
DEPT MR 58890  
Somerville, MA 02144

Re: FOIA Case No. NLRB-2018-001165

Dear Ms. Cagle:

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received in this Office on August 2, 2018, in which you seek the following:

- Any and all documents within the case file in *ZUFFA, LLC, d/b/a Ultimate Fighting Championship ("UFC")*, Case No. 04-CA-219498;
- Any and all written materials and communications, including but not limited to e-mails, memos, talking points, and other correspondence and directives relating to *UFC*, Case No. 04-CA-219498;
- Any and all written materials and communications of the aforementioned types, made between any and all NLRB employees and/or representatives and any other person mentioning or regarding Zuffa, the Ultimate Fighting Championship, and specified individuals;
- Any and all written materials and communications of the aforementioned types, made between the NLRB Division of Advice or General Counsel offices and their employees and/or representatives, and NLRB Region 4 employees and/or representatives, mentioning and/or regarding *UFC*, Case No. 04-CA-219498, Zuffa, the Ultimate Fighting Championship, and specified individuals.

You agreed to assume financial responsibility for the processing of your request in the amount of \$37.00.

We acknowledged your request on August 2, 2018.

After conducting a search of the Agency's electronic casehandling system, NxGen, I have determined that many of the records responsive to your request are privileged from disclosure pursuant to FOIA Exemption 7(A) of the FOIA. 5 U.S.C. § 552(b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with a pending enforcement proceeding. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Exemption 7(A) applies "until the investigation is completed and all reasonably foreseeable administrative and judicial proceedings concluded." *Title Guarantee Co. v. NLRB*, 534 F.2d 484, 490 (2d Cir. 1976). This is because the FOIA is not intended to function as a private discovery tool during the pendency of a case. *Robbins Tire*, 437 U.S. at 242. Here, Case No. 04-CA-219498 is open, pending an ongoing investigation before the Region; therefore, the requested records, including any and all communications and investigatory records in the case file, are being withheld in full pursuant to Exemption 7(A).

However, your request is granted to the extent that I have attached the publicly available formal records in Case No. 04-CA-219498, which here include the unfair labor practice charge and the initial docketing letters to the parties. Redactions have been made to portions of these records to protect the privacy interests of individuals named in the case file. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C). Please note that the attachment to charge is withheld under Exemption 7(A) as it is an investigatory record which if disclosed could harm or interfere with the open case.

Please be aware that certain case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, once a Board decision issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of this case can be tracked on the Agency website at [www.nlr.gov](http://www.nlr.gov) by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/04-CA-219498>.

For the purpose of assessing fees, we have placed you in Category D, the "all other requesters" category, because you do not fall within any of the other fee categories. Consistent with this fee category, you will be assessed charges to recover the reasonable direct costs for searching for the requested records,

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except that you will not be charged for the first two hours of search. NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(2)(ii)(D). Charges for all categories of requesters are \$9.25 per quarter hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Less than two hours of professional time was expended in searching for the requested material. Accordingly, there is no charge assessed for this request. Given that there are no fees associated with the processing of your FOIA request, your request for a fee waiver is denied as moot.

You may contact Marissa Wagner, the FOIA Attorney who processed your request, at (202) 273-2957 or by email at [marissa.wagner@nrlb.gov](mailto:marissa.wagner@nrlb.gov), as well as the Agency's FOIA Public Liaison, Patricia A. Weth, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist or Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency's FOIA Public Liaison is:

Patricia A. Weth  
FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [FOIAPublicLiaison@nrlb.gov](mailto:FOIAPublicLiaison@nrlb.gov)  
Telephone: (202) 273-0902  
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: (202) 741-5770  
Toll free: (877) 684-6448  
Fax: (202) 741-5769

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You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.regulations.gov/foia/action/public/home> or by mail or email at:

Nancy E. Kessler Platt  
Acting Associate General Counsel  
Division of Legal Counsel  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [DLCFOIAAppeal@nrlrb.gov](mailto:DLCFOIAAppeal@nrlrb.gov).

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter, such period beginning to run on the calendar day after the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

*Synta E. Keeling /s/*

Synta E. Keeling  
Freedom of Information Act Officer

Attachment: (seven pages)